

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1393 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MANILAL MOTILAL

Versus

R M PARI  
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Appearance:

MR VC DESAI for Petitioner  
No one has appeared on behalf of respondents  
Nos.1 and 2  
Resp. No.3 appears to have been deleted.  
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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 24/11/2000

ORAL JUDGEMENT

Mr V.C. Desai for the appellant. No one has  
appeared on behalf of the respondents. This is a  
defendant's first appeal directed against the judgement

and decree dated 19/25/27th August 1980 in Civil Suit No.180 of 1976 passed by the City Civil Court, Court No.11, Ahmedabad, whereby the suit was partly decreed against defendant no.1 i.e. the present appellant who was ordered to pay a sum of Rs.5,231.85 to the plaintiff with interest at the rate of six per cent per annum from the date of the suit till realisation of the amount with proportionate costs. The suit was dismissed against defendant no.2 who was only a broker in the suit transaction. The suit had also been decreed against defendant no.3 i.e. the merchant on 16.9.1976 as the defendant no.3 did not file any affidavit for leave to defend.

2 The plaintiff (respondent no.1 herein) is a registered partnership firm carrying on the business at Ahmedabad as shroff commission agent. The defendant no.1 i.e. the present appellant was doing cloth business at Bombay while defendant no.3 was carrying on the cloth business at Ahmedabad and defendant no.2 i.e. respondent no.2 herein was a broker at Ahmedabad. According to the plaintiff, the defendant no.2 under the instructions from defendant no.1 brought a cheque dated 9.1.1974 which was in favour of defendant no.1 and which had been issued by defendant no.3 to the plaintiff's office. The cheque was for a sum of Rs.5,231.85. This cheque was brought by defendant no.2 i.e. broker as an agent of defendant no.1. Against this cheque the broker (defendant no.2) obtained a cheque of Rs.5,179.55 from the plaintiff in the name of the appellant drawn on Syndicate Bank, Bombay, dated 15.1.1974. Defendant no.2 i.e.. the broker obtained a sum of Rs.52.30 in cash from the plaintiff being the amount payable to him from defendant no.1 towards brokerage. The said amount of the cheque was duly received by the defendant no.1 and defendant no.2 was paid Rs.52.30 in cash by the plaintiff on behalf of defendant no.1. The cheque which had been given by the defendant no.2 drawn by defendant no.3 in favour of defendant no.1 was dishonoured and the defendants did not pay the dues of the plaintiff in spite of the notice issued by the plaintiff to all the defendants on 15.3.1974. The defendants nos.1 and 3 did not reply to the notice while defendant no.2 gave a false reply dated 21.3.1974 to which the plaintiff sent a correct reply dated 14.8.1974. These defendants had not cared to pay the dues of the plaintiffs and hence the suit. The defendant no.1 filed a written statement at exh.28 adopting all the contentions which have been raised in the affidavit in leave to defend dated 19.8.1976 at exh.15. The stand of the defendant no.1 was that there was no privity of contract between the plaintiff and

defendant no.1. He denied that plaintiff was a partnership firm but admitted that he is carrying on business at Bombay, that defendant no.2 is a broker and defendant no.3 is a cloth dealer at Ahmedabad. It was contended that defendant no.1 supplied the goods to defendant no.3 through defendant no.2 who acted as a broker in the transaction. After the goods were supplied to defendant no.3, defendant no.2 collected the cheque from defendant no.3 towards the price of the goods sold and supplied by defendant no.1 to defendant no.3. The defendant no.2 deposited the said cheque with the plaintiff and the plaintiff issued a cheque for Rs.5179.55 drawn on Syndicate Bank, Bombay, in favour of defendant no.1 and paid Rs.52.30 in cash to defendant no.2 towards his brokerage. Defendant no.1 received the said cheque from the plaintiff and it was duly encashed by him. The said amount was credited by the defendant no.1 into books of account. The said amount was received by the defendant no.1 from the plaintiff for and on behalf of defendant no.3. It was pleaded that defendant no.1 had nothing to do with the plaintiff who is a shroff doing business of discounting and that the plaintiff accepts the cheques of brokers from Ahmedabad and in lieu of receipt of such cheques issues his cheques with a margin of four to five days between the two cheques and earns interest for 4-5 days. That this practice is followed by all the shroffs in Ahmedabad. It is the practice of these shroffs that when the broker hands over such cheques to them, they take a guarantee from the brokers to the effect that if the cheque is dishonoured he would make good the amount. These cheques are always discounted by the shroffs at the risk of the shroffs. Defendant no.1 was not concerned with what transpired at Ahmedabad between the plaintiff on one hand and the defendants nos.2 and 3 on the other hand. It was pleaded that there was no privity of contract between the plaintiff and defendant no.1 and it was denied that the plaintiff paid any amount to defendant no.2 on instructions of defendant no.1. On the basis of these averments the suit was sought to be dismissed with costs.

3 In the suit the defendant no.2 had filed purshis exh.26 dated 7.10.1976 adopting the averments made in the leave to defend. It was contended that he was only a broker and was not liable for the suit amount and it was defendant no.3 who was liable. It was contended that the plaintiff had told him that cheque dated 9.1.1974 which was drawn by defendant no.3 was not honoured. It was stated that the cheque which was given by the plaintiff dated 15.1.1974 was sent by him to Bombay and defendant no.2 had received his brokerage amount from the

plaintiff. It was further contended that after the cheque drawn by defendant no.3 was dishonoured and after two other cheques which were also drawn by the defendant no.3 were dishonoured, the plaintiff obtained a cheque of Rs.1100/- from defendant no.3 on 9.1.1974 and therefore defendant no.2 was not liable. It was also contended that cheque of Rs.1100/- drawn by defendant no.3 was also dishonoured and the plaintiff had taken the goods worth that amount from defendant no.3 under bill no.78. At the time when the issues were framed, the question regarding jurisdiction was not pressed by defendant no.1. The trial Court framed the following issues and recorded the findings as mentioned below against each of the issues:-

#### ISSUES      FINDING

1. Does the plaintiff prove that it is a duly registered partnership firm?      Affirmative
2. Is the plaintiff not entitled to the suit claim against the defendant no.1 on the ground that there was no privity of contract between the plaintiff and the defendant no.1?      There is privity of contract
3. Does the plaintiff prove that it is entitled to recover Rs.5,231.85 ps from the defendant no.1 being the amount of the cheque bearing No.2293/80 dated 9.1.1974 as contended in paras 3 and 4 of the plaint?      Affirmative
4. Does the plaintiff prove that it is entitled to claim interest amount of Rs.941.15 and notice charges of Rs.15/- from the defendant no.1?      In the Negative
5. Does the defendant no.1 prove that the plaintiff is not entitled to claim any amount from him on the ground that it has recovered the Suit from the defendant no.3 as contended in the written statement Exh.28?      In the Negative
6. What should be the final order and decree?      As per the final order

4 I have heard learned counsel for the appellant and have also gone through the impugned judgement. On the basis of the evidence as has been discussed by the trial Court in para 8 to 11 of the judgement, it is very clear from the admissions made by the defendant no.1 i.e. the present appellant in the written submissions that the defendant no.2 was acting as a broker in the transaction between the defendant no.1 and defendant no.3 and that defendant no.2 had collected the cheque from defendant no.3 and managed to obtain the payment to the defendant no.1 through the plaintiff. Therefore, defendant no.2 was acting as an agent of defendant no.1. As such, it is clear that there was no collusion between the plaintiff and defendant no.2. The evidence clearly establishes the liability of the defendant no.1 to reimburse the plaintiff for the sale amount received by defendant no.1 through the cheque and paid by the plaintiff to defendant no.2 towards brokerage which was payable by defendant no.1. The acts of the broker have been duly ratified by defendant no.1 by encashing the cheque drawn by the plaintiff.

5 This Court therefore finds that the findings have been correctly arrived at by the trial Court against each of the issues and the suit has rightly been decreed against defendant no.1 for a sum of Rs.5231.85. The findings recorded by the trial Court are based on evidence, duly supported by reasons and warrant no interference by this Court in the present first appeal. This Court does not find any substance in the appeal and the same is hereby dismissed. No order as to costs.

(M.R. CALLA, J.)

(mohd)